
A N
ANSVVER

To the ORDER of the
Middlesex Justices,

Dated the 20th. of December last,
Touching the SUPPRESSING of
CONVENTICLES.

Which Order is here compared with the Act of the 22d
of this King, on which the same is Grounded. Wherein it
will appear that the said Order is Lame and Insufficient for any
Constable, or other Officers to Act by.

B E I N G

An Answer to a Letter received from a Friend in *Middlesex*,
Wherein is also laid down some Directions to the Officers touching the
Execution of that Act, according to the true intent and meaning of
that Law.

By D. R.

S I R,

HAVING Received yours, with the Inclosed Order of the
Middlesex Justices in Print, concerning the Suppressing Se-
ditions Conventicles, and having considered the same as far as
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my weak capacity will allow me, I must give you this short Answer, as to the Validity of the Order and Warrants Issued out by those Justices, relating to the Law of the 22d of this King, hoping that hereafter you may receive a more perfect Answer from a Lawyer more experienced in those Affairs.

First for Answer, I must say, as my Judgment, it cannot but be a wonder to considerate men, that such an Order, and at this time a day, should be put forth, in case the same did agree with that Act (which I wholly deny it doth) if we consider but these two things.

The one is, the sense of the Nation declared by our Representatives in two or three late Parliaments, wherein by their Unanimous Votes, they have not only declared in favour of the Dissenting Protestants from the Church of *England*, and Ordered Bills to be brought in for Repealing of all Laws made against them, but have also Voted it dangerous to the publick safety of the Kingdom, to Prosecute any Protestant Dissenters upon any Statute whatever, or to that effect, as you may see by the Vote following, *viz.*

10. **Resolved, That it is the Opinion of this House, that**
 11. **the Prosecution of Protestant Dissenters upon the penal**
Laws is at this Time grievous to the Subject; a weaken-
ing of the Protestant Interest; an encouragement to Pope-
ry, and dangerous to the Peace of the Kingdom.

Now certainly if this be so, then the sentiments of the Justices, and the whole Commons of *England*, do vastly differ; for by this Order of the Justices, you will find they look upon such as are Protestant Dissenters, to be a danger to the Kingdom, and a disturbance of the Peace; and the Justices, by this Order, do seem to hint as if there were no other danger but from them, the Papists having slipped their Necks out of the Collar. Now, Sir, this being the Case, the Justices being of one Opinion, and the Parliament of another, it may not be amiss for those Officers that execute those Justices Warrants, to consider what may fall out hereafter; however, all I shall say, is, That I take the whole House of Commons Judgment to be of much more value than 500 Justices of the Peace, though backed by as many Privy-Counsellors

Tellors, But I know some Persons that love to undervalue Parliament, will readily tell you, as in truth it is, that Votes and Intentions of the House of Commons are no Laws 'till passed the House of Peers, and the Royal Assent; we grant it true, Votes are no Laws; but when a Law is found burdensome and grievous to the Nation, as the house of Commons thought in this case it was, then might not the Parliament make a beginning to Repeal them, and if they want time to finish what they had so begun, is not the judgment of the whole Nation to be taken notice of before a few single men, be they in what capacity they will? Certainly heretofore Votes in Parliament were held a great deal more sacred, and it may be yet they may be found so hereafter: Remember the case of Justice *Tressilian*, who was Hanged for putting a Law in Execution that was in it self Destructive to the well being of the People of *England*.

But in the next place, the Order of the Justices seems strange as to the timing of it; for now, in all haste the Fanaticks must be Prosecuted upon this Law, though thought by the last Parliaments to be an obsolete Law, and Destructive in its self to the common good. I would fain know of these Justices, Whether there was ever yet for this 20 years last past, any jot or tittle of damage to the King and Kingdom; by conniving or suffering the *Dissenters* to meet to serve God in their own way; or if there was any damage, then, Whether it happened since the Votes or before; If since, then I confess the Votes ought to stand for nothing, and the people punished that did the wrong; but if none, what can be said why all of a sudden it must be done now, when we are affraid of being swallowed up with Popery every day, unless it be to hasten Popery, by destroying the *Protestants*? for sure no honest man of common sence will say, To beat down and suppress Popery, must be to tear in sunder the Protestant *Dissenters*; but if it be so, which I take for granted, that the Protestant *Dissenters* have behaved themselves as well towards the King and Kingdom since the last Parliament, as they did before, then I can see no reason for this eager Order, unless it be on purpose to oppose the Parliament and to fly in their face; to let us see that we will boldly fly in their faces, and tyrannize over them, when

they cannot Vindicate themselves, but let that rest for a while.

But I make no doubt that the Adversaries of the Protestant Religion, being the Papists, are very busie and appear disguised in every Court and Corner, and will be ready enough to say by and by, *Oh but it is a Law, and you must conform to the same; and they that will not obey the Law, are not fit to live, especially Nonconformists, the Phenaticks, such as go to Conventicles, &c.* Now I would ask those Loyallists (as they are pleased to terme themselves) though they scarce know what the word means, If there are not more *Nonconformists* amongst those that call themselves true Regular Conformists, then there is of the other, if all the Laws made against them should be but as strictly taken notice of, as the Conventicle Act is now by this Order of the Justices, for to instance in but two or three Laws made about the Clergy. And the first is their *Non-Residence* and *Pluralities*: see the Statute of 21 H. 8. which saith, *They shall reside at the Benefices, &c.* which to obey, to a great many of them, is impossible, for some of them have four or five Benefices, and it is impossible for them to live at all those places at once, unless they could divide themselves as they can their Texts. In the same Statute it is ordained, *That no Ecclesiastical Person shall have more than one Benefice*; yet we see they have many.

There is another Statute of King James, that commands that on the 5th of November the Act of Parliament shall be read in every Church by them, at, before, or after Divine service, for Celebrating the day of Thanksgiving for the discovery of the Powder Plot. Now if the Justices should make an Order for the punishment of all the Clergy that have not observed to read that Act in their Churches, on the 5th of November, I very much question whether there would not be more Nonconformist Ministers conformed of the Sons of the Church, than those that are now to be Prosecuted for holding of Conventicles; but again, as to the very Act of Uniformity made in this Kings Reign, it is there expressly declared, *that no other Form or Ceremony shall be used but what is prescribed in that Act, and in the Book of Common Prayer annexed*; yet if you please to look into the Act, and the Book, you will find that the Conforming Clergy do not conforme

form to that Law neither; for they use divers Ceremonies that are not there, and omit much of what is there, witness their going up to the Altar as they call it, to read second service, and giving a Reverend Bow there.

Then their coming out of the Pulpit after Sermon, as some of them do, and reading some Prayers out of the Book in the Desk, or at the Altar again, and giving the Blessing not in the Pulpit at all.

Then in their setting the Communion-Table at the East-end of the Church, Altar-wise, East, and West, in some places, with glorious Covering, and Railed in as an Altar, when as it ought to be set North and South, and in the Body of the Church or convenient place, with a clean Linnen Cloth. And then as to their turning their Faces all of a sudden to the East, turning their Breech upon God Almighty; and Bowing at the Name of Jesus, yet not at the Name of God or Christ. Pray in what place may these things be found in that Act, I would be very glad they would give a reason of this *Non-Conformity*, or *Over-Conformity*, which is the same in strictness.

But, Sir, if you consider there is not only a Nonconformity amongst the Clergy in these Points, but also a Nonconformity in divers of the Lay men too; as for instance, *Swearing* and *Drunkenness*, they are really against express Laws as well as *Conventicles*, and as much against the Good of the King, and Peace of the Kingdom, as any thing in the world can be.

1 Jacob.
cap. 9.
21 Jacob
cap. 7.
1 Car. c.

And then in the next place, all the *Ale-houses* and *Tan-keepers* in England are all *Nonconformists* too; against express Statutes both of King James, King Charles I. and this King, which Laws say, *That no Ale-house-keeper or Victualler in England, shall sell the best strong Beer and Ale for more than one Penny for a full Quart, and two Quarts of small for one Penny.*

Yet I believe there is scarce one this day in England obeys those Laws, though they are in as much Force as the *Conventicle Act*, and ought (by the Justices good leave) to be as severely prosecuted as well as divers other Laws, which for Brevity I forbear to mention, therefore shall say no more of this matter, but come to the Order it self, and consider how well it is suited with the Act.

First.

First, The Order tells you, *That whereas it was His Majesties Express Order of the 14 of December, That all Conventicles and Meetings should be suppressed, &c.* So would His Majesty, no doubt, have all the other Laws put in Execution for the good of His People, and they, as Justices, ought to have known and done their Duty, if they had no such particular Order as they are pleased to mention, and to put all those other Laws against *Swearing, Drunkennes, Popish Recusants, and against Non-Resistance and Pluralities, and against Clergy-men that pretend to be the Onely Sons of the Church, and yet have new Inventions that the Act never heard of; and also to take care, that the Laws against Victualers should be put in Execution, and many other Laws as serviceable as this of prosecuting Conventicles can be:* But the Order goes on, and tells us, *All Unlawful Meetings upon pretence of Religious Worship.* Now I shall crave leave, before I proceed any further, to say that the Act doth not intend to disturb any person that meets *truly* to worship God, but such as *pretend* Religious Worship, and under that Notion disturb the Peace and Quiet of the Kingdom, which I never yet heard any of the *Protestant Dissenters* ever did at their Meetings, and therefore a Question will arise, Whether the Act of the 22th of this King, there being now no other in force against *Conventicles*, be an Act that can disturb any that really do worship God in their Meetings quietly and in reality, and not make it a pretence of Religious Worship.

In the next place the Order tells us, (*viz.*) *It is this day Ordered, &c. That the Laws for Suppressing all Conventicles and Unlawful Meetings, upon pretence of Religious Worship within this County, &c. And that the said Justices do use their utmost endeavor, &c.* Now I suppose that this Order was made by the Justices of the County themselves, and for the same Justices to desire themselves to do Justice, in my Opinion, is to put a Doubt or a Distrust upon their Worships. And that which seems most strange, is the General Order it self grounded upon this Act, when in the Act it self there is no Colour nor Warrant for any such General Order, but only that in case there be any Unlawful Meeting in any County, Precinct, or Division, and be proved up-

on the Oath of Two Witnesses to the Justices in manner and form, as by the Act is directed, then the Justices shall grant their Warrants to the Constables, &c. to seize and levy the Penalty; but how this Act will support such a General Order made on Suppositions without any Witness of Particulars, is worthy to be considered by the Reader.

Then the Order goes on, (viz.) *And to the intent this good work may be effectually performed, it is farther Ordered, That Warrants be made and directed to the Constables, &c. within this County by name, commanding them, and every of them within their Parishes, Divisions and Limits, that they, and every of them do make diligent inquiry of all the Conventicles and Unlawful Meetings in their several Precincts, &c.* Now this Order seems to have no manner of relation to the Act or thing intended, for the Act gives no such Directions either to the Justices, or the Constables, to obey any such Order; for though the Act commands the Officers, that they shall execute any Warrant sent by a Justice, to seize any Person or his Goods after the Person is Convicted, if the Officer or Constable have knowledge thereof by good Information; yet it says not one word that the Constable shall execute any Warrant, or seize a Person or his Goods at Random upon a General Warrant, unless the Justices mean by this Order, that the Constables and Church-wardens, &c. must be common Barretors, as well as turn Informers; neither of which, by that Act, can they be compelled unto, which I shall demonstrate thus, viz.

The Act, Section 1. Enacts, *That it shall and may be lawful to, and for any one or more Justices of the Peace of the County, Limits, Division, Corporation, or Liberty where the offence aforesaid shall be committed; and such offence, either by the confession of the party, or Oath of two Witnesses, &c. to make a Record of every such offence under his and their Hands and Seals, &c. which Record so made, as aforesaid, shall to all intents. &c. be taken to be a full and perfect Conviction; and thereupon the said Justices, or Magistrates, &c. shall impose on every such Offender the sum of 5s. for such first offence. By which it* 22 Car. 2
Sect. 1.

plainly appears in this Clause, that the Party must be first Convicted, before the Constables or Under-Officers can execute the Warrant for the first Offence; and if the Record must be made, then it follows, that the Person Convicted must be named; but how this General Order, or General Warrant will justify the Constables, I leave all men to judge; and except the Justices can support their Order, and such General Warrants by any other part of the Statute, this, I am sure, is so far from enabling the Constables to act according to Law in the Case, that it hath not the least semblance of it; for by the Act, the Witnesses must be the Informers, and give in the Names, in order to Convict the Party: But in these proceedings of the Justices, the Constables, &c. must turn Informers against their Neighbors, to find themselves work to seize them and their Goods, which no Constable or Officer can do by this Law, unless we can find some other Paragraph in the Act that will suit that Order; therefore I shall proceed and consider another Clause in the Act, which seems, at first, to be more pressing upon the Constables, &c. that is *Section 11.*

And be it further Enacted, &c. That if any Constable, &c. who shall know, or be credibly informed of any such Meetings, &c. held within his Precincts, &c. And shall not give Information thereof to some Justice of the Peace, &c. And endeavor the Conviction according to his Duty, but such Constable, &c. shall wilfully omit the performance of his Duty, and be thereof Convicted in manner aforesaid, he shall forfeit for every such Offence the Sum of 5 l. to be Levied upon his Goods and Chattels, &c.

Now I conceive, this Clause which is all in the Act, that bath any colour to press the Constables to turn Informers, is far short of the thing designed; for by this Clause, it appears the Constables, &c. must first be credibly informed by others of a Conventicle or Meeting within their Precincts, before they are obliged to take notice or look after them, and this Clause is far short of forcing the Constables, &c. first to go about their Precincts to seek for Conventicles, as if they wanted employment, which by the Sessions Order, they are supposed to do. But further, admit that a Constable or other Officer short of a Justice, should wholly neglect his Duty contained in this Clause; yet I conceive he runs no hazard at all as to the Penalty of the 5^l. before mentioned, nor any other hazard upon this Statute, because the Act doth not prescribe how the Constable shall be convicted, whether by the Sessions, the Justices, or by a Jury, nor in what manner the Constable ought to be prosecuted for the 5^l. mentioned in the Act, for not doing what the Act commands.

And to shew that the Constables and other Officers are not bound to go and enter into Meeting Houses unadvisedly. In the 9th Sect. 9. of that Act, you will find that they have no power to seize or break open any Meeting, or take any Person there, nor be ayding, until Certificate be made to them respectively under the Hand and Seal of any one Justice of Peace, of his Particular Information or Knowledge of such Unlawful Meetings; So are the express words of the Act, but by the Justices Order, here they seem to command the Constables to do all without Certificate, or any thing else, as the Act directs; but in the next place, this Order commands the Constables, &c. to take the Christian Names, and Sir Names and Places of Abode of those that have Preached within a Month last past, or shall Preach before the next Quarter Sessions in any Conventicle or unlawful Meeting; also, the Christian Names and Sir Names of the most considerable Persons that frequent the said Conventicles. Now upon the whole matter, this doth not only command the Constables and others to be Informers, but contradicts both the Act and it self; for the Act warrants no such thing, the Act allowing no more, but if there be sufficient Witness, then both the Justices are to convict, the Officers to Execute, for the first Offence 5 s. a peece; the second Conviction 10 s. a peece, and in case in the second Conviction, insufficiency of the Hearers, then to the value of 10 L. upon such as were present, instead of those not able; but by the way, and with the Justices leave, for the first Offence by this Act, there can be no more levied than 5 s. upon Poor or Rich of the Hearers, nor shall any Answer but for themselves till the second Conviction; and might it not be replied to the Justices by the Constables, how shall they get these persons to give them their Names so exactly before the next Quarter Sessions, as the Order directs; so as the Constables may deliver them truly to the Ju-

lices on their Oaths; as is expressed in the Order; Suppose wrong Names be given to the Constables, must they Swear to them to Convict the Meeters? and what if the Persons will not give them their Names, for that the Law forces no Man to give his Name to Convict himself? and it may not be amiss to consider further, that the Constables, if they turn Informers, must also Swear, that no part of Divine Service was read at that Meeting all the time of their being together, which cannot well be sworn, unless by *Irish* Witnesses; and without they do prove that, it is no Conventicle within the Law.

In the next place the Order commands to make a true return of the Names so taken to the Justices of the Sessions, in Writing, of such Persons as Preach and be at Conventicles, the day of the Month and place where they were held, and the Officers to prove it upon Oath, to the end such Conventicles may be convicted according to Law. Now what Law these Gentlemen mean I know not, I am sure it cannot be the Conventicle-Act, for that commands none of the Constables or other Officers to Swear against any. And this may be said of the Order in general, That were it not an Order of Sessions, it might be taken to be a force upon Men to Swear, and looks something like an Invitation to Barratry, or at least setting up a new Trade of Swearing; and as to that part which commands the Constables to return the Names to them at the Sessions, there is no pretence in the Act to warrant such a Command.

Therefore as to the whole Order of the Sessions, and their Warrants thereupon to the Constables, sent by the High Constables, wherein they are commanded to act according to that Order, I do here affirm, There is not the least ground in the Act for such Orders, nor can the Constables or Headboroughs Answer the same in case they should turn Informers, if questioned hereafter, no more than some of the Justices of the Peace of *Middlesex* can answer the stopping Indictments from being found by the Grand Jury at *Hick's* Hall about three or four Sessions ago, which was to hold an Attempt and Stab to the Common Law, that I dare affirm there never was so great an Offence committed by any Justice since the *Savage* Race began in *England*.

Thus having given you my Opinion of the Order, and compared the same a little with the Act; I shall go on a little further to shew what the Constables and Officers Duties are upon the Act. And first I do say, Where the Constable receives a Warrant to seize any Person convicted, he ought to obey it and go with the Informers to seize the Person; but nevertheless, if the Person be in any House that is shut, and the Doors refused to be opened, the Constable hath no Power to break it open, nor to stand by while it is done, unless it be where there is a Meeting, and then no more but to get into the Meeting if they are refused entrance, and no other ways will the

Act bear them out in, nor is it the Constables work to be an Informer, but to keep the Peace, and if any Constable have a Warrant from a Justice to go to such a place where there is a Meeting, to take the Names of the People, who will not give their Names, the Constables nor Justices cannot force them, nor are they bound to be over forward in asking, for the Act appoints no such thing; nor are the Constables or any under Officers obliged to enter into any Meeting-house to disturb them, unless that first they have a Certificate under the Hand and Seal of some Justice of the Peace of such Meeting, which appears plainly in the 9th Paragraph of that Act.

But admit such a Certificate should be made of a Meeting had or intended to be had, consider how dangerous a thing this will be to the Constables or any under Officers to seize Persons in the same Meeting, for how can he that comes to seize the Persons, tell but that those very People there, met, is according to the Liturgy and Practice of the Church of *England*. And if it be so, that the same Duties of Religion are performed there in a peaceable manner, as are in the Church of *England*, then it is most plain that the same is no Conventicle, and so not within the compass of the Law. Now it will not be amiss to consider what is used for Service in the Church of *England*. In the first place Prayer is used in the Church both by the Common-Prayer-Book, and without, in the Pulpit; then Singing of Psalms, then a Sermon. Now if the Meetings do perform nothing but these Exercises, it cannot by this Act be made a Conventicle, and if there be any Meeting in *England* that doth not all or the most of those Duties, then let the *Middlesex* Justices and Constables do what they please with them, and if they do all these Exercises, though one of them may be omitted, yet I think it cannot be made a Conventicle, for the words are, *viz. In other manner then according to the Liturgy and Practice of the Church of England*; and how any Officer can Swear or Prove that Prayer, Preaching, and Singing of Psalms are not the Practice and Usage of the Church of *England*, I know not, but must leave them to consider the Consequences.